

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION**

**5:08CV35-3-V  
(5:05CR9-23-V)**

**LEONARD A. CLEMENT,**

**Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's letter to the Court dated August 26, 2008, (doc. no. 5), which this Court will construe as a motion for reconsideration of this Court's Order, (doc. no. 2), denying Petitioner's Motion to Vacate (Doc. No. 1.) Petitioner's motion will be denied.

Petitioner filed a Motion to Vacate on May 7, 2008 alleging: 1) that his counsel was ineffective in waiting months to file his motion to withdraw his guilty plea; 2) that his prior convictions were misdemeanors and not felony convictions; 3) that he was improperly sentenced for cocaine instead of marijuana; and 4) that his sentence is outside the Guideline range. By Order dated June 2, 2008, this Court dismissed Petitioner Motion to Vacate. (Doc. No. 2.) Petitioner complains that this Court dismissed his Motion after allowing the United States to file a response and without allowing him to respond and requests that this Court allow him the opportunity to present a brief in his case.

The Petitioner is incorrect. The United States did not file a response to Petitioner's Motion to Vacate. This Court dismissed Petitioner's Motion on initial review. Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, sentencing courts are directed to promptly examine

motions to vacate, along with “any attached exhibits and the record of prior proceedings . . .” in order to determine whether the petitioner is entitled to any relief on the claims set forth therein. In the event it is determined that the petitioner is not entitled to relief, the reviewing Court must dismiss the motion. Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, this Court dismissed Petitioner’s Motion to Vacate after determining that Petitioner was not entitled to any relief on the claims raised in his motion. Therefore, Petitioner’s contention that the United States filed a response to his motion but that he was not permitted to file a brief is erroneous. There is no other stated basis for this Court to reconsider its Order dismissing Petitioner’s motion. Therefore, for the reasons stated herein, Petitioner’s motion for reconsideration is denied.

**SO ORDERED.**

Signed: September 8, 2008

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees  
United States District Judge

